

January 4, 1983

Status of Kuwait Under the Minerals Lands Leasing Act

Issue: Should Kuwait be found non-reciprocal under Section 1 of the MLLA?

Background: 1) In general, the MLLA covers leasable minerals (oil, gas, coal, sulphur, etc.) located on public and acquired lands. It does not cover offshore oil, which is covered by the OCS Lands Act. Offshore oil and gas represent roughly 70% of the total oil and gas produced on Federal lands. The MLLA does not cover oil and gas produced on State, Indian or private lands.

The MLLA limits the right of foreign citizens to own stock of a domestic U.S. corporation holding leases under the MLLA, if that foreign country denies "similar or like privileges to citizens or corporations of their country."

2) Under the DOI standard of review, foreign citizens may own stock in a domestic corporation owning an interest in U.S. resources if a) U.S. citizens are not precluded or unreasonably restricted from participating in the foreign country's mineral resources because of the U.S. citizen's stock ownership, or if b) stock ownership is prohibited in that foreign country, does the foreign country permit other opportunities for investment or participation in mineral resources on public lands, and if c) that foreign country does restrict investment in mineral resources, is there discrimination against U.S. citizens or corporations.

3) The Constitution of Kuwait decrees that all natural resources are the property of the State. No Kuwaiti citizen owns mineral rights, and all exploration and production for oil is carried out by the Kuwait Petroleum Company (KPC). Foreign participation in commercial activities is permitted by law, through partnerships and joint stock companies provided that 51% of the stock is Kuwaiti owned. Joint ventures are also permitted. Since 1980, all oil and gas activities have been consolidated in KPC, including the acquisition of foreign concessions previously granted to foreign companies, with the exception of a jointly administered Kuwaiti-Saudi concession. There are no companies with Kuwaiti stockholders currently involved in oil and gas activities with KPC. Neither Kuwaiti nor U.S. citizens hold mineral interests, and thus there appears to be no evidence of discrimination against U.S. citizens.

Analysis and Decision: A concession to explore for and develop minerals may be issued by the Government of Kuwait. Furthermore, U.S. citizens may own up to 49% of the stock of a Kuwaiti Corporation, and such corporation could be granted a concession or participate in ventures with KPC. All resource activities in Kuwait are conducted by KPC, and no Kuwaiti citizens may invest in KPC.

In interpreting the MLLA, the Interior Department has focused on the effect of investment by U.S. citizens in foreign corporations. Kuwaiti law does not preclude private or foreign investment, and there is no discrimination against U.S. citizens. Therefore, Kuwait should be found reciprocal under Section 1 of the MLLA.

Comments: 1) DOI received several hundred negative comments on Kuwaiti reciprocity. Most were written on 3 x 5 postcards, postmarked from North Carolina, and were not substantive. Generally, they objected to oil and gas activities on public lands in western North Carolina, particularly by foreigners. •

2) In 1982, KPC purchased Santa Fe International for \$2.5 billion. At that time, Santa Fe International had a small interest (worth roughly \$9 million) in Federal leases. Since that time, they have increased their holdings in Federal leases through the acquisition of a small oil and gas exploration company with Federal and non-Federal leases. Santa Fe has invested much more heavily in offshore leases, with leases valued in excess of \$25 million. Santa Fe has expressed an interest in acquiring further leases. If Kuwait were found non-reciprocal, further investment in a depressed industry would be barred, and Santa Fe might be forced to divest itself of all Federal onshore leases.

3) KPC has invested substantial capital above its initial investment in Santa Fe International. Santa Fe has been a leader in developing exploration technology for Alaskan offshore operations, which are capital intensive and require very long term investment.

4) All resources produced in the U.S. can be controlled in emergency situations through the Defense Production Act and other legislation.